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ABSTRACT

The options available to state education agencies (SEA's) facing decisions concerning the regulation of controversial course content are discussed in this paper, which uses the issue of whether or not to mandate the teaching of creationism as an example. The author first clarifies the issues in the debate over teaching creationism, touching on the relevance to the debate of First Amendment regulations, child-benefit concepts developed from constitutional law, notions of religious freedom, public financing of religion, the sincerity of the issue's proponents, and the proponents' rights to expression of their opinions in the schools. Options open to SEA's prior to adopting regulations mandating inclusion of creationism in the curriculum include treating the matter as any other proposed curriculum change, seeking the state attorney general's opinion, or opposing or accepting the proposal outright. Once the change is mandated, the SEAs' options include having the subject treated as any other controversial subject, seeking procedural advice from the attorney general, or taking no action at all. (Author/PGD)

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MANDATING CURRICULUM: THE CREATIONISTS

An Issue Analysis Paper

Prepared for The Chief State School Officers
of the States of Alaska, Hawaii, Idaho,
Oregon, Montana and Washington

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Introduction

Curriculum mandates--prescribing or proscribing by law or regulation what shall or shall not be taught--provide one way of assuring that compulsory public education meets the expressed needs and wishes of society. For example, there has usually been general public agreement that the fundamental skills--reading, writing, and arithmetic, to name the most common of the basics--should be taught. To assure that these subjects are, in fact, firmly embedded in the school curriculum, constitutional, legislative, or state board of education fiats prescribe their inclusion. Likewise, American history, U.S. government, physical education, driver education, state history, and any number of other subjects may typically be required.

Proscribing or forbidding other curricular topics by law or regulation is also common: Communism, anything labeled "unAmerican," and with increasing frequency, such controversial topics as sex education or values clarification are often specifically excluded from curricular consideration.

It is difficult to argue, per se, that the public should not have the right to determine what they want the schools to teach and not to teach; the problems arise when mandated inclusions or exclusions lead to violations of other accepted principles, such as freedom of expression or the responsibility of the school to seek the truth and to teach students to examine thoughtfully controversial or even distasteful viewpoints.

A current example of the problems encountered with mandating curriculum may be seen in the widespread attempts of groups (very loosely organized and somewhat imprecisely lumped together as the "Creationists") which are seeking to have the Biblical creation theory taught in science

classes on an equal-footing, equal-time basis with the evolutionary or Darwinian hypothesis.

In 15 state legislatures, bills have been introduced that would mandate that the creationist view be taught as part of all science courses; the state of Georgia has actually passed such legislation. In some 27 states, textbook selection committees have come under pressure to reject science books which do not specifically give equal treatment to the Divine Creation theory.

The widespread and vigorous efforts of the Creationists to have mandated by law their view of the universe and its origins may, for some people, raise all sorts of theological and scientific questions. There will be no attempt in this analysis, however, to discuss either side of the issue, to attempt to state who is "right," or even to examine whether there is, in fact, any inherent conflict between the creationist and the evolutionary hypotheses.

Rather, we need to look at the potential problems embodied in this current attempt to add another mandate (and its corollary prohibition: thou shall not teach Darwin as the truth) to a curriculum already under heavy burdens imposed by a variety of special interest groups. Specifically, what effect does this movement have on State Education Agencies, and what actions/alternatives are open in dealing with this problem?

I. Clarifying the Issue

Because the basic issue involves fundamental personal beliefs, closely intertwined with matters of theology and religious orthodoxy, even a dispassionate analysis of just the practical problems facing SEAs must be approached with great care. In attempting to clarify the

problem, the best we can come up with is a set of purely tentative hypotheses. The statements below, therefore, must be considered not as indisputable facts, but as suggestions for thoughtful consideration.

A. Generally speaking, the Creationists' attempt to prescribe curriculum does not necessarily present a clear-cut First Amendment case, a classic church-state issue. Unless the law or regulation proposed specifically uses such phrases as "Divine creation," or "Biblical account," or "Genesis story," neither the "establishment" nor the "free exercise" clauses of the First Amendment would seem to be violated. ("Congress shall make no law respecting the establishment of religion, or preventing free exercise thereof.") Nor would the teaching of a theory of special or fiat creation, without specific reference to the Divinity or to the Bible, appear to be in violation o the two preminent Supreme Court tests used to invalidate many suspect state laws: the "primary purpose and effect" test or the "excessive entanglement" with religion test.

B. The Creationist movement does not seem to be another child-benefit-theory case, such as those involving the provision of transportation or textbooks to private (parochial) school students. (The child-benefit-theory, it may be recalled, relies on the "general welfare" provision of the U. S. Constitution to justify providing services or "benefits" directly to the child without promoting religion or entangling the school with religious authorities or doctrines.) Therefore, citing cases in which the Supreme Court has ruled for or against certain religiously-tinged school practices as tested against the child-benefit-theory would not seem applicable to this problem.

C. The Creationists' attempt to have their viewpoint included, emphasized, or protected in the curriculum may not necessarily involve a "religious" issue at all. That is, there are many--if not a majority--of those who accept the Darwinian/evolutionary hypothesis who have no problem including this view within their own religious convictions. Therefore, this particular curricular issue need not set at odds the "religionists" and the antireligionists." At least it is not clear-cut good-guys/bad-guys conflict.

D. This problem is not, like many involving religion and public education, an income-transfer issue. That is, unlike proposals for direct public aid to private schools, public reimbursement for services (such as testing) provided by private schools, or tuition refunds or tax credits, there is nothing in what the Creationists are proposing that suggests giving anybody's money to anybody else. Therefore, all of the arguments and all of the cases which involve such income-transfer schemes do not seem to have a bearing on this issue.

E. This issue does not appear to be one in which the sincerity of the proponents can appropriately be used as a telling argument. No one needs to doubt the sincerity of the Creationists (nor of those who differ with them, for that matter), but that really is irrelevant. Sincerity is a great virtue, but an insufficient one. There are still to be found in our society, appallingly enough, sincere racists and sincere sexists; they believe what they believe with the utmost honesty, intensity, and conviction. Most of us are absolutely convinced that they are wrong, but that doesn't make them insincere. Not every firmly-held belief is entitled to equal time in (or even inclusion in) the curriculum. Maybe, as some groups passionately believe, the earth is flat, but.....

F. Mandating anything in the curriculum is difficult to justify on the grounds that "everyone is entitled to his own opinion." The formal curriculum, given the constraints of time and money, is inevitably selective. This is always a difficult point to make without sounding dogmatic or arrogant, but the plain fact is that not everything--not even desirable things--can be included in what the schools teach.

II. SEA Policy Options

If the above analysis is reasonably correct, there emerge a number of action options which would appear to be open to State Education Agencies in formulating educational policy to address the Creationist push for another mandate in the curriculum. Some of these choices are appropriate prior to actual enactment of law or adoption of regulation; some are applicable after the law or regulation has become an accomplished fact.

A. Prior to Enactment or Adoption

1. The proposal to include the Creationist view in the curriculum can be treated by the SEA as would any other proposed curricular change. Most, if not all, SEAs have a regular procedure that is followed, including, typically, a provision for study of the pros and cons of the proposed change by a committee or task force composed of curriculum specialists, teachers, administrators, and representatives of the publics concerned. Public hearings are usually held prior to any State Board of Education action, especially if the matter is at all controversial. Frequently, the prescribed procedure calls for pilot testing of the material in representative school districts. The State Board may then act to approve or disapprove the proposed change.

By treating the matter as any other statewide curricular change would be treated, conflicts are mediated, passions have time to cool, and the final action—favorable or unfavorable to the proposal—is at least thoughtful and dispassionate.

2. While the proposal is still in the early stages, it may be advisable, as another option, to secure an Attorney General's advisory opinion regarding the legality of the projected law or regulation. For example, if "Biblical" creation is required to be taught, both state and U.S. Constitutional provisisons would almost surely be violated. (Of course, this option of securing an advance legal opinion may be rejected in certain circumstances just because prior experience in the state has shown that it is not advisable to solicit an AGO opinion unless it is unavoidable: you might not like what he tells you!)

3. Another option is simply to oppose the proposal when it first surfaces, on any one or any number of the grounds which are suggested in the previous analysis (Part I, supra.). The danger of this option, of course, is that it puts the Department in the unenviable position of being "against" something before it has been treated to full curricular review.

4. Still another option is simply to accept the proposed law or regulation as being expressive of "the will of the people." Exercising this option would place the SEA in a position in which it all too often finds itself: a follower, rather than a leader in educational policy formulation.

B. After the Fact

1. If the law is enacted or the regulation adopted, the SEA still finds itself in a position to exercise positive educational leadership by helping determine how it is to be implemented. One option is to treat it under whatever rules exist for the teaching of any controversial subject. These rules usually include provision for formal establishment of SEA guidelines and safeguards to assure that the issue is treated in a fair and open manner, with careful attention to seeing that there is neither tyranny of the majority nor tyranny of the minority.

To make sure, insofar as possible, that this controversial matter is appropriately handled in the classroom, special staff-development activities may have to be devised for consultants who will be representing the SEA in the local districts.

2. A second option, again, might be to secure an AGO ruling. Even if the ruling does support the law and/or regulation as being permissible under state constitution and statutes, the legal analysis may well give additional guidance which will assure that legal pitfalls may be avoided.

3. Still another option might be for the SEA to take no stand at all. The law is just there; and it is sometimes true that issues should have--it's regrettable that Moynihan brought the phrase into disrepute!--a certain amount of benign neglect.

Conclusion

The issue of mandating the Creationist view into the curriculum is perhaps not really a religious, a scientific, or a curricular issue at all. It is essentially a political one.

Therefore, the educational policy options open to or chosen by Chiefs, State Boards, and SEAs will stem from essentially political judgements, which—in the best and highest meaning of the word--are judgments made in the best interests of the body politic.

But, because political judgements are also value judgments, it may be appropriate to reiterate what has been suggested above: that whenever a curriculum mandate—such as the one discussed here--violates Constitutional principles, the only acceptable position must be against the mandate and in support of the First Amendment.